

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE BANKAMERICA CORP.
SECURITIES LITIGATION,

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Case No. 4:99 MD 1264 CDP

MEMORANDUM AND ORDER

In August 2015, this Court ordered an accounting of the NationsBank Settlement Fund for the purpose of locating and accounting for all the remaining NationsBank settlement funds. The auditor issued its final report on May 14, 2018,¹ which showed that a balance of just over \$34,100 remained in U.S. Bank Account #1500. (ECF 954-7.) As ordered by this Court on July 23, 2018 (ECF 966), the remaining balance of Account #1500 has since been transferred to the bankruptcy estate of former Lead Counsel Green Jacobson, P.C.

In a memorandum filed December 4, 2015, and an affidavit dated August 30, 2018, attorney Jonathan Andres, formerly of the now-defunct Green Jacobson law firm, represents that Account #1500 was “the primary account into which the settlement funds payable to members of the NationsBank Classes were deposited and from which those funds were distributed for payment.” (ECF 900 at p. 2; ECF

¹ Although the auditing firm described its May 2018 report as an “update,” all interested parties agreed at a hearing in July 2018 that the audit was closed and that the May 2018 report was to be considered the final report.

1002-3 at ¶ 6.) Andres further represents that Green Jacobson engaged in a series of monetary transfers involving Account #1500 and two other settlement-related U.S. Bank accounts – one of which contained funds to pay administrative costs (Account #7726) and the other to pay attorneys’ fees (Account #1600) – and that because of misunderstandings as to the purpose of these accounts, Green Jacobson’s transfers resulted in an increase to Account #1500’s settlement-fund balance in an amount that actually represents a portion of Green Jacobson’s attorneys’ fees. Andres attests, and the bankruptcy trustee argues, that the balance that remained in Account #1500 therefore represents Green Jacobson’s attorneys’ fees and not part of the NationsBank Settlement Fund that remains to be distributed to class members.

The undisputed evidence before the Court, including Andres’s attestation, shows that Account #1500 was “the primary account into which the settlement funds payable to members of the NationsBank Classes were deposited and from which those funds were distributed for payment.” Counsel’s self-described misunderstandings and accounting mistakes that resulted in an increase to the settlement fund payable to the NationsBank classes should inure to the benefit of the classes. This conclusion is supported by the auditor’s final report, which shows that 1) there was no detail provided for what Andres now describes as an inadvertent transfer of \$90,864.72 from Account #7726 that closed that account;

and 2) the transfer of Account #1600's balance to Account #1500 that had the effect of closing Account #1600 is in an amount different than the amount to which Andres attests.²


On the information before the Court, I am not convinced that the balance that remained in Account #1500 and is now in the bankruptcy estate represents any portion of Lead Counsel's attorneys' fees in this action. Rather, the undisputed evidence convinces me that Account #1500 contained the monies payable to the NationsBank class members from the NationsBank Settlement Fund. Any purported mistake or misunderstanding of counsel as to the purposes of the relevant accounts inures to the benefit of the classes. I will therefore order the bankruptcy trustee to deposit into the Registry of this Court the funds formerly held in Account #1500, with any interest accrued thereon.

Accordingly,

IT IS HEREBY ORDERED that David A. Sosne, Chapter 7 bankruptcy trustee for the estate of Green Jacobson, P.C., and intervenor herein shall **forthwith** deposit into the Registry of the Court, **and more specifically into the NationsBank Settlement Fund held and administered by this Court**, the funds

² Compare ECF 900/ECF 1002-3 (Andres's attestation that balance of Account #1600 in the amount of \$129,991.87 transferred to Account #1500, closing Account #1600) with ECF 954-7 (final audit report showing balance of Account #1600 in the amount of \$145,304.58 transferred to Account #1500, closing Account #1600).

formerly held in U.S. Bank Account #1500 that were received into the bankruptcy estate by Court Order dated July 23, 2018, together with interest accrued thereon.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 12th day of November, 2019.